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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,201	09/12/2003	Van H. Brown	116/1	7222

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EXAMINER	
ABBOTT, YVONNE RENEE	

ART UNIT	PAPER NUMBER
3644	

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/661,201	BROWN, VAN H.	
	Examiner	Art Unit	
	Yvonne R. Abbott	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 September 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *12/15/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Priority

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows: An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

Claim Objections

2. Claims 7 and 16 are objected to because of the following informalities: in claim 16, "favor" should be –flavor--. Appropriate correction is required.

3. Claim 13 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The outer shell comprising pork skin was previously recited in claim 11 from which claim 13 depends (note: if claim 13 is cancelled, the dependencies of its dependent claims should be changed).

Claim Rejections - 35 USC § 112

4. Claims 9, 10, and 11-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 9 and 11 recite a "ratio" but no ratio (i.e. A:B) is recited; instead what appears to be recited are weight percentage ranges. Clarification is necessary.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Fisher (4,260,635). Fisher discloses an animal food product comprising a pet chew toy, comprising: (a) a relatively hard and tough outer shell formed of dried and shaped animal skin such as cowhide or rawhide; and (b) a relatively soft flavored and scented meat product encapsulated within said outer shell (col. 8, Examples 11 and 12).

7. Claims 1, 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Sherrill et al. (6,584,938). Sherrill et al. disclose a pet chew, comprising: (a) a relatively hard and tough outer shell formed of dried and shaped animal skin; and (b) a relatively soft flavored jerky member meat product (120) encapsulated within said outer shell.

8. Claims 1, 2, and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Perlberg et al. (6,223,693). Perlberg et al. disclose a pet chew, comprising: (a) a relatively hard and tough outer shell formed of dried and shaped animal skin, and (b) a relatively soft and scented meat product (120) encapsulated within said outer shell; wherein the outer animal skin is formed from rawhide which encompasses hides of not only cows, but pigs, goats, buffaloes, and so forth (col. 3, liens 9-16), wherein flavors can be combined with humectant in a coating process (col. 3, lines 16-32) ;.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 4, 5, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher. Fisher discloses animal skins such as "cowhide, rawhide, etc" to form the outer skin. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use pork skin as the outer shell of the Fisher product as an

alternative animal meat skin. The percentage of pork fat would have been obvious to derive the desired chew resistance (i.e. more or less pliable). With respect to claim 9, although the percentage range of soft product is not specifically disclosed, it is disclosed that different weight percentages of other ingredients would have been obvious to yield a product having sufficient strength and depending on the desired hardness or chew resistance. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the product have the claimed range of soft product likewise depending on the desired chew resistance, also the desired size or shape of the product, and because where routing testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routing skill in the art. With respect to claim 10, although beef tripe is not specifically disclosed, since fibers derived from animal tissue including the skin, muscles, intestines, and cow derived products are used in the multiplayer product, it would have been obvious to use beef trip as the inner layer dried meat product so as to maximize use of the animal parts of the animal used as a whole.

11. Claims 3, 7 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perlberg et al. Perlberg et al. disclose a pet chew comprised of an outer shell which can be formed of pork skin and a soft flavored and scented meat product encapsulated within the outer shell, wherein flavoring may be coated on the outer shell, however, the percent fat of the pork skin, that the coating comprises a synthetic sweetener or meat digest, and the weight percentage of the soft meat product are not

specifically disclosed. The percentage of pork fat would have been obvious to derive the desired chew resistance (i.e. more or less pliable). With respect the disclosure of weight percentages, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the product have the claimed range of soft product depending on the desired chew resistance, also the desired size or shape of the product, and because where routing testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routing skill in the art. As for the coating comprising a synthetic sweetener or meat digest, since it is disclosed that enhancing additives such as colors, flavors, scents, nutritional supplements, etc can be applied to the skin, that one of the additives is a sweetener or meat digest would have been obvious to enhance the flavor and scent of the outer shell to increase the animal's attraction to the product.

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perlberg et al. in view of Anderson et al. (6,277,420). Although it would have been obvious to one of ordinary skill in the art at the time the invention was made for the coating to comprise a synthetic sweetener since Perlberg et al. disclose that enhancing additives such as colors, flavors, scents, nutritional supplements, etc can be applied to the skin, Anderson et al. also teach that the addition of synthetic and natural sweeteners to the pet chew would be obvious as a palatability enhancer.

13. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perlberg et al. in view of Sherrill et al. Although Perlberg et al. disclose an animal

chew having an outer rawhide shell and an inner meat filling, it is not disclosed that the inner meat filling is jerky beef tripe. Sherrill et al. teach a pet chew having an outer shell and an inner flavor member made of jerky. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use jerky as the inner meat filling of Perlberg et al. as taught by Sherrill et al. that jerky is an extremely appetizing treat for dogs and the taste of jerky entices dogs to chew the product; additionally, Sherrill et al. teach that the jerky includes any animal flesh which is cut into strips which may be flavored, thus to provide that the jerky is beef tripe would have been obvious to one skilled in the art as animal meat which is inexpensive and easily made into jerky based on its shape.

14. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sherrill et al. Although the ratio or percentage of the soft jerky product to the outer shell is not specifically disclosed in Sherrill et al. it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the claimed amount depending upon the desired chew resistance and palatability of the product; additionally, where routing testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routing skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (703)308-2866. The examiner can normally be reached on Mon-Thurs 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (703)305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yvonne R. Abbott
Primary Examiner
Art Unit 3644